

IN THE SUPREME COURT OF MISSISSIPPI
No. 2015-CA-00997

OXFORD MANOR CONDOMINIUM HOMEOWNERS
ASSOCIATION, et al.

APPELLANTS

v.

BRIDGE PROPERTIES OF MISSISSIPPI, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

APPELLEE

**JOINT RESPONSE OF APPELLANTS AND BROOKS YATES TO MOTION OF
LAURA LAMAR, MARY RUMY, ZSOLT RUMY, AND MARTA TOCZYLOWSKI**

Appellant Laura Lamar, joined by appellees Mary Gallagher Rummy, Zsolt Rummy, and Marta Toczykowski,¹ on September 8, 2015, filed with this Court a document purporting to be their response to the motion for prehearing conference filed by appellants Oxford Manor Condominium Homeowners Association (“OMCHA”) and owners of seven of its eight units and to the motion to participate in prehearing conference filed by Brooks Yates, who, along with OMCHA, is a cross-defendant to a cross-claim filed by the Rumys and Ms. Toczykowski which remains pending in the Chancery Court of Lafayette County, Mississippi. Their prayer, on page 3 of their document, asks that “this Court direct Defendants/Appellants and Non-Party Brooks Yates to appear before Charlie Swayze on September 25, 2015, for consideration of settlement.” According to M.R.A.P. 27(a), “an application for an order or other relief shall be made by filing a motion for such order or relief.” The document filed on September 8 is therefore a motion, giving appellants and Yates a right to file a response under Rule 27(a).

¹ Appellant Lamar, who is the same person as Laura Lampton, joined OMCHA and all unit owners except the Rumys and Ms. Toczykowski, in filing a notice of appeal. Her new counsel recognized her status as an appellant in filing a corrected notice of appearance on her behalf on September 8, 2015, although he has not yet sought a substitution order relieving appellants’ counsel of further obligations to her.

Appellants and Yates are happy to join in that request for relief. Although the exhibits attached to the document filed with this Court on September 8 give a woefully incomplete account of the communications among all parties concerning mediation, the Rule 33 motion filed with this Court should make it inescapably plain that appellants and Yates are eager to mediate. The problem is that there has never been an agreement among all the parties and counsel listed on Exhibit A to the September 8 document that mediation should include the issues pending in this Court.

Although the Rumys, Ms. Toczyłowski, and Ms. Lamar purport on page 2 of their document filed on September 8 to seek “global resolution of the claims,” they do not explain how that can be achieved without resolving this appeal. They assert on the same page that “Yates has no direct interest in the issues on the appeal, as this appeal relates solely to the determination of the existence of an easement (on real property that Yates does not own),” but the cross-claim filed against Yates by the Rumys and Ms. Toczyłowski depends on the existence of that easement. In accusing Yates of fraud, cross-claimants assert that they “have suffered damages in the form of lost property value.” C.P. 2:229.² If the easement does not exist, Yates and OMCHA cannot be liable for lost property value because no value can have been lost.³

² Although the Clerk of this Court on September 1, 2015, returned the transcript to the Chancery Clerk for correction, this Court’s docket now reflects that the full record was filed on September 9, 2015.

³ Although this Court does not have the Circuit Court record before it, it can take judicial notice, pursuant to M.R.E. 201(b)(2), of the documents produced by the Oxford Police Department in response to a subpoena issued by the appellants in this case, copies of which are attached hereto as Exhibit 1. The information contained therein is plainly admissible under M.R.E. 803(8)(B). The report reveals that Tyson Bridge told the police that he had torn down the fence on the advice of his lawyer, who is also the lawyer in this appeal for appellee Bridge Properties of Mississippi, LLC, because of the supposed existence of an easement. Bridge will certainly have the right to produce contrary evidence at trial, but a ruling by this Court on this appeal that no easement exists will undoubtedly have substantial relevance to the disposition of his claims, including malicious prosecution.

Because no party to any of the proceedings in this Court, the Chancery Court, or the Circuit Court has any objection to Mr. Swayze's qualifications as a mediator, this Court can facilitate a "global resolution of the claims" by designating him to conduct a prehearing conference under Rule 33. The mediator would thereby receive authority under Rule 33 "to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the Court, including settlement." Obviously, it makes it much easier to settle the issues pending in this Court if resolution can be reached concerning the claims for additional damages asserted by cross-claimants in the Chancery Court and Tyson Bridge in the Circuit Court. Appellants and Yates can hardly abandon their opposition to the prescriptive easement while additional claims for damages based on that easement remain pending against them.

It may very well be possible that the mediator will be able to achieve a resolution of all issues in all courts. If not, it will be his duty under Rule 33 to make a report to this Court in the form of "an order which recites the action at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel." In particular, if this appeal were to go forward, then significant issues should be determined at the outset.

First, this Court is aware of the motion pending before the Chancery Court under M.R.C.P. 60(b) to vacate its partial final judgment and to transfer all issues to the Circuit Court, for possible consolidation with the action filed by Tyson Bridge; a copy of that motion is attached to appellants' motion for a prehearing conference as Exhibit A. The parties should discuss and this Court should determine whether the Chancery Court should be instructed to rule on that motion before further proceedings occur in this Court; if the Chancery Court vacates its partial final judgment, then jurisdiction over this appeal disappears. Alternatively, this Court may wish to consider whether it

has jurisdiction of this appeal in any event, necessitating an examination of whether the Chancery Court properly applied M.R.C.P. 54(b). If so, then a determination should be reached on whether the jurisdictional issue should be briefed before the merits or in a single brief with the merits. A recommendation can be made on all of these matters as a result of the Rule 33 conference.

At this point, there is substantial agreement among all the parties to this appeal. Appellee Bridge Properties of Mississippi, LLC, has filed no opposition to the motion for a Rule 33 conference.⁴ The other three appellees and appellant Laura Lamar support the need for a conference and ask that appellants and Yates be ordered to appear before Swayze on September 25, 2015. Appellants and Yates are happy to do that, so long as this Court vests Mr. Swayze with powers and duties prescribed by Rule 33.

This is an unusual procedure, but this is an unusual appeal. The fact that one lawyer has entered an appearance for one appellant and three appellees indicates just how unusual it is. Mr. Swayze is no doubt capable of bringing some order to this circular firing squad. This Court should issue its order under Rule 33 empowering him to do so.

Respectfully submitted, this the 10th day of September, 2015.

Oxford Manor Condominium Homeowners
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⁴ Nor has Bridge Properties filed any opposition to the motion of Brooks Yates to participate in that conference. Although the Rumys, Ms. Toczyłowski, and Ms. Lamar disparage Yates throughout their document as a “Non-Party,” they ask this Court to order him to participate in mediation. In light of Yates’s agreement to such an order, there is no need for this Court to determine his actual role in this appeal, although Ms. Lamar, now acting as an appellant in support of the judgment below, is hardly in a position to challenge his right to appear as an appellee in opposition to that judgment.

Brooks Yates

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CERTIFICATE OF SERVICE

I, the undersigned counsel, do hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the MEC system, which sent notification of such filing to the following:

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This the 10th day of September, 2015.

s/Michael B. Wallace
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